

Dear FCC, The Notice of Proposed Rulemaking requests comments on many topics. I will

restrict my comments to those to which I can address. I speak as a concerned citizen, computer and video expert and HDTV owner who sees my right to Fair Use being abrogated in favor of copy prevention, which cannot possibly hope to achieve the stated goals and can only materially benefit content producers at the expense of all other parties.

- Is the broadcast flag the appropriate technological model to be used?

I don't believe there is an appropriate technical model when the topic is restricting access to broadcasts made over a resource owned by the public. There is a serious conflict of interest problem when content providers want to use the public's property to distribute their product to the public, but only if the public agrees to give up their right of Fair Use. Although no such expectation is explicitly codified, by making the production, importation or ownership of equipment that does not recognize the copy prevention bit illegal, the consumer will be unable to purchase equipment that is capable of allowing them the opportunity to exercise their rights. This flies in the face of operating in the public interest. There are multiple uses of the public spectrum that serve the public interest 100% of the time, the ISM band being an example. Public resources need to be available to the public 100% of the time, not just when companies who are using those resources under the guise of "in the public interest" decide to allow it. If there is copyrighted material that is so incredibly compelling that its distribution requires a completely secure digital infrastructure (and all the cost associated therein), the appropriate venue for its distribution is satellite or cable, where secure distribution has already been implemented for some time. Content that is utilizing public airwaves needs to be usable by the public without giving up their rights of Fair Use.

- Is a government mandate requiring broadcasters and content providers to embed the broadcast flag (or other content control mark) within digital broadcast programming necessary?

No. Occam's razor states that the simplest answer to a question is usually the correct one. The FCC believes "...the current lack of digital broadcast copy protection may be a key impediment to the DTV transition's progress." As a current HDTV owner, I believe the \$2200+ price tags, uncertainty about future equipment compatibility with the proposed rulemaking and almost nonexistent volume of interesting content are far worse impediments than the lack of copy prevention. Content producers seem to be implying that all kinds of new and exciting content would become available if a copy prevention technology were in place. As nice as that shiny new content would be, I believe if the \*existing\* content were more widely available (i.e. sporting events instead of the evening news) and the price were to drop below \$1200, HDTV sets would be selling as briskly as analog big-screen televisions are.

Copy prevention is the wrong solution to the problem of lack of adoption. The reality is, nobody is going to spend \$2000 to watch reruns of Barney Miller, no matter how clear the picture. Get the content on that people have demonstrated a clear willingness to spend big money on (sports) and the problem will take care of itself.

-Should the FCC mandate that consumer electronics devices recognize and give effect to the broadcast flag (or other content control mark)?

This answer to this question is predicated on what the desired result is for including such a flag. The result that has been publicly stated is preventing the redistribution of content in violation of it's copyright by broadcasting it with a special marker that indicates to all devices that it is non-recordable. Content producers claim that without such a flag and the equipment that would recognize it, they will go bankrupt because consumers will be able to make high quality digital recordings of over-the-air (OTA) broadcasts. This implies that once consumers have made a copy for their own use, they will distribute it widely in violation of the copyright (i.e. all consumers are pirates), thereby willingly risking the huge fines and prison sentences that go along with copyright infringement. This doesn't sound very likely to me, if for no other reason than its not very convenient to do. It would take in excess of 40 hours on the fastest PC to compress an hour-long HDTV broadcast so that it could be recorded onto a blank \$5 DVD disc. It is not fast, easy or cheap, three hallmark properties that have defined the adoption of every successful consumer electronics trend I've ever seen. I would also like to point out, questions of bankruptcy aside, that recording a television show for your own viewing is perfectly legal under the doctrine of Fair Use. What is being asked for here is an abrogation of that right.

I believe the far more likely rationale for implementing copy prevention is the increased profits that will be realized as an increasing amount of content will be tagged as "non-copyable" and only available on for viewing again on Pay-Per-View. Content providers will gradually enforce this on all broadcasts, even for the re-runs of old shows with minimal commercial value. Why not? Each show has the potential to generate revenue from some small segment of the viewing population if they are unable to record it. Why would content providers pass up an opportunity to develop a revenue-stream from every show?

In short, the Broadcast Flag system has nothing to do with preventing copyright violation and everything to do with maximizing profit for the producers of content at the expense of the Fair Use rights of consumers.

- What is the appropriate point in a consumer electronics device at which digital broadcast copy protection should begin?

There is no appropriate point for copy prevention to occur on OTA digital broadcast systems, because copying is legally protected right that has been established by law.

- Would a digital broadcast copy protection system be effective in protecting digital broadcast content from improper redistribution?

This measure might prevent casual copyright violation by a consumer, however, consumers are not the people producing the massive volume of downloadable video content on the Internet today. To produce a downloadable DVD on the Internet, it takes a high-speed Internet connection and extremely powerful computers to re-encode the DVD video to make it small enough to download. Even then, it can take days of processing time, during which the computer is completely unusable for any other function, requiring highly unstable and complex software to generate the final result. The vast majority of people I

know won't even record a movie off the television onto a VCR tape because off the inconvenience of not being able switch channels while recording. I simply can't believe they are going to invest the substantial time, money and dedicated computer resources required to redistribute copyrighted material when they can go down to Best Buy and purchase the same content on DVD for \$14.99.

The fact is, a Broadcast Flag will not prevent the dedicated efforts of those technologically knowledgeable individuals who are intent on violating copyright, especially if they are doing it for financial gain. If a copy prevention system such as the Broadcast Flag is implemented, they will acquire\modify\build\steal the required equipment and continue to distribute copyrighted video content illegally. The argument can be made "Even if its not 100% effective, we still must take measures to ensure that this sort of illegal distribution does not occur". The serious error built into that statement is the assumption that consumers are providing the infringing material. If you look on the Internet today, the overwhelming majority of copyright infringing video material is provided by the very small groups of people who have the prerequisite time, knowledge, money, motivation, equipment and who are willing to risk prison in exchange for not having to spend \$14.99. This is not the average consumer in the United States.

Copy protection will do nothing to stop professional copyright infringers while simultaneously imposing great expense and inconvenience on the rest of us.

- Should the FCC mandate the use of specific copy protection technologies (such as DTCP/SC or HDCP) in consumer electronics devices that are designed to respond to the broadcast flag?

No. Mandating one technology for anything, especially a technology that is completely owned by a small consortium of companies who have a vested interest in making it as secretive and profitable as possible can only lead to increased costs for the consumer. As with all things, there should be a public evaluation process followed by an accredited standards body (ITU, IEEE, NIST etc...) with concrete evaluation metrics to decide what technology is most appropriate.

If there is any doubt whatsoever that the BPDG should not conduct the evaluation, it should be extinguished by the followed quote: "However, BPDG members were unable to agree on the criteria by which a copy protection technology would be evaluated and approved for digital broadcast use and chose to reserve the topic for potential futher discussion by a CTPWG working group." (<http://bpdg.blogs.eff.org/archives/nprm.pdf>, paragraph 7) If the people implementing the technology can't agree on its evaluation criteria, how could they possible generate a relevant conclusion?

- What is the impact of digital broadcast copy protection mechanisms on existing and future electronic equipment?

All existing HDTV equipment manufactured since 1996 would be completely unusable with the proposed copy prevention system. Individuals who have purchased this equipment, myself included, have spent great sums of money, often in excess of \$5000, and literally hundreds of hours to get HDTV televisions, tuners and satellite receivers working in their homes. What is

being proposed is nothing less than the forced obsolescence of that equipment. Who will compensate those individuals for their equipment which is no longer usable because the "standard" has been modified just 7 years after its original introduction for the benefit of someone else? The content producers? The equipment manufacturers? The government? The people who have already bought HDTV equipment, who if anything should be rewarded because their early purchases have helped drive down the cost of HDTV equipment for everyone else, are in effect being punished because of their early adoption of HDTV technology. There will be voluminous litigation to resolve the issue of compensation if the HDTV standard is modified to require the mandatory addition of copy prevention technology.

Future devices will have substantial expense and complexity added to their implementation by virtue of having to license a secret copy prevention technology and then have that device validated as being compliant with said secret copy prevention technology at undisclosed expense. Future sales of HDTV-related equipment will also be severely impacted, likely resulting in missing the target of 85% of homes being HDTV ready by 2007. If consumers know that the transmission standard can be changed at any time, requiring the purchase of entirely new equipment, who would knowingly purchase HDTV equipment? The recurring upgrade cost by itself would be prohibitive. By disabling the existing HDTV equipment that has already been purchased, the FCC is sending a powerful message that says its not safe to purchase HDTV now or in the future.

- Will digital broadcast copy protection have an effect on the development of new consumer technologies?

Yes, it will stifle the development of any new consumer technology that might threaten the existing revenue or business model of content producers, thereby depriving consumers of the wonderful diversity of products that a competitive marketplace brings. This pattern of behavior has already emerged from both the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) who have used the Digital Millennium Copyright Act (DMCA) to threaten, intimidate and harass anyone whom they have considered a threat to their current business model. Of even more importance is the chilling effect that that the implementation of copy-prevention could have on free speech. Would talking about the proposed Broadcast Flag after its implemented be considered a crime? The RIAA and Secure Digital Music Initiative (SDMI) thought so when they threatened to sue Princeton Professor Edward Felten citing the DMCA over his plans to publish his research regarding the significant security vulnerabilities of SDMI's proposed copy prevention technology for audio recordings ([http://www.eff.org/Legal/Cases/Felten\\_v\\_RIAA/20010409\\_riaa\\_sdmi\\_letter.html](http://www.eff.org/Legal/Cases/Felten_v_RIAA/20010409_riaa_sdmi_letter.html)).

What if similar vulnerabilities are discovered in the Broadbase Flag technology? Who will go to prison for talking about the flaws in my television? I for one am not prepared to give up my First Amendment rights to watch Hollywood's "premium" content, nor am I willing to let the entrenched business models of today stifle tomorrows revolutionary invention.

Thank you for your time.

Sincerely,  
John Stytz

